

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, : 19cr576(BMC)  
Plaintiff, :  
-against- : United States Courthouse  
GENARO LUNA, : Brooklyn, New York  
Defendant. : Wednesday, November 30, 2022  
: 2:30 p.m.  
:

- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: UNITED STATES ATTORNEY'S OFFICE  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
BY: SARITHA KOMATIREDDY, ESQ.  
Assistant United States Attorney  
For THE DEFENDANT: THE LAW FIRM OF CESAR DE CASTRO, P.C.  
The District  
111 Fulton Street - 602  
New York, NY 10038  
BY: CESAR DE CASTRO, ESQ.  
MIEDEL & MYSLIWIEC, LLP  
80 Broad Street, Suite 1900  
New York, NY 10004  
BY: FORIAN MIEDEL, ESQ.

Court Reporter: SOPHIE NOLAN  
225 Cadman Plaza East/Brooklyn, NY 11201  
NolanEDNY@aol.com

*Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Aided Transcription*

Proceedings

2

1 (Via Videoconference.)

2 (The Hon. Brian M. Cogan, presiding.)

3 THE COURT: Let me summarize for the record what  
4 happened while the court reporter was off and if either lawyer  
5 thinks that I got it wrong, they will add to it.

6 While we were off the record we covered the fact  
7 that all parties consent to doing this conference by video and  
8 I made a finding under the CARES Act. I next asked the  
9 prosecutor whether or not if we allow Appendix B to the  
10 questionnaire to be shown to the jurors on the day of  
11 selection for the first time, would that effectively disclose  
12 all of the Government's witnesses. And she said that it  
13 would.

14 All right, let me just ask the prosecutor then, why  
15 are we having a separate Exhibit B?

16 MS. KOMATIREDDY: Your Honor, I don't think it needs  
17 to be separate. I think that it can be one exhibit and that  
18 we just pass it out when the jurors come in for in-person voir  
19 dire and that way we can keep that list secure and also  
20 distribute it on a need-to-know basis to only those jurors who  
21 end up coming in for voir dire.

22 THE COURT: Well, it is a separate list in that it's  
23 separate from Attachment A that the jurors will have seen when  
24 they first get the questionnaire; correct?

25 MS. KOMATIREDDY: My suggestion, Your Honor, is that

W. Name - direct/cross - Atty

3

1 we edit the questionnaire to remove the, do you recognize  
2 these people question from the questionnaire part it and we  
3 can just ask that question when they come in in person.

4 THE COURT: You're presuming to do that with both  
5 Exhibits A and B?

6 MS. KOMATIREDDY: I'm just proposing that we  
7 combine -- have one list so that there's one exhibit and that  
8 we just pass that around -- have printed copies and pass it to  
9 the jurors when they come in on the days for questioning.

10 THE COURT: Give me approximately the total number  
11 of names that the jurors coming in for voir dire will be asked  
12 to review as they're being selected.

13 MS. KOMATIREDDY: Your Honor, I would expect it to  
14 be one to two pages, the names of counsel, witnesses and other  
15 people of interest would likely be maybe 70.

16 THE COURT: Don't you think that having to review 70  
17 names is possibly going to increase the potential that a juror  
18 will skip over a name they might otherwise have had if they an  
19 earlier view of the list?

20 MS. KOMATIREDDY: I don't have a strong view, Your  
21 Honor. If you prefer that they get it at the time of the  
22 questionnaire we can do that. Now that the jurors are filling  
23 out questionnaires in January, our only request would be that  
24 we provide the list and I think the parties will be able to  
25 agree on a final list in January shortly before they are

W. Name - direct/cross - Atty

4

1 needed by the jury coordinator office.

2 THE COURT: I am missing something here,  
3 Ms. Komatireddy, because if, in fact, the government is going  
4 to disclose all of its witnesses on what you've now described  
5 as a merged list, then why do the parties have to agree? You  
6 put in your names and the defendants put in their names and we  
7 give it to the jurors.

8 MS. KOMATIREDDY: I think that's right, Your Honor.  
9 All I'm really concerned is timing, that we don't distribute  
10 such a list now and we can wait until closer to the trial.

11 THE COURT: All right. Let me hear from the  
12 defense.

13 MR. DeCASTRO: Thank you, Judge. This is Cesar de  
14 Castro. First, just to address -- I think you had mentioned  
15 addresses. I think there might have been a miscommunication  
16 there. We are not expecting or requesting addresses, either  
17 of witnesses or anybody. We understand that's anonymous. The  
18 issue with location I think that we raised is question number  
19 52 which references Exhibit A says that the -- and this is my  
20 experience in prior questionnaire cases, is that we also have  
21 places that would be -- if people have experience with any of  
22 the places, the locations. And, so, that was something that  
23 was absent from the list that I was saying -- and I'm not in a  
24 position to know exactly what the Government is going to do at  
25 trial. So I figured we should have locations there because if

W. Name - direct/cross - Atty

5

1 it turns out that someone lives next door to one of the  
2 locations that they're going to elicit testimony about, I  
3 think that's relevant. So that's the location part.

4 THE COURT: It is typical to list known locations  
5 where significant events occur as part of this elimination of  
6 conflict process with respect to jurors. I've seen that in  
7 about every case I've ever done. That list is independent of  
8 the residence or location of any of the witnesses. It's just  
9 to make sure, as Mr. De Castro stated, that, and this happened  
10 to me once, that someone doesn't say, oh, I walk through that  
11 area every day. I know exactly what it looks like.

12 Let me hear from the prosecutor on that.

13 MS. KOMATIREDDY: I agree, Your Honor. We have no  
14 objection to that. We'll add locations of interest.

15 THE COURT: Okay. So, anything that the defense  
16 needs to add to that or are you satisfied on that?

17 MR. DeCASTRO: On locations, all good.

18 THE COURT: Okay. Now, the jurors are coming in on  
19 January 9th. On January 7th then we will have the Government  
20 assemble a list. The defense will submit its list to the  
21 Government. The Government will assemble it, give it to the  
22 Jury Department. The Jury Department will attach the list to  
23 the questionnaire and then the jurors will be given the list  
24 when they come in to fill it out. Everyone agree?

25 MR. DeCASTRO: My only question is when does -- when

W. Name - direct/cross - Atty

6

1 do the jury people need it to produce it? Is that the 7th or  
2 is that the -- I mean, it's days, I understand, but --

3 THE COURT: We will find out the latest possible  
4 date the Jury Department can have it. If it's earlier than  
5 the 7th, we'll get it to them, but it will be the latest  
6 possible day.

7 MR. DeCASTRO: And, Judge, if I could add, just on  
8 the names issue I just want the sort of record to be clear  
9 anyway, that my only concern was that all the names are there  
10 because I've had too many coincidences in trial practice  
11 that -- and I appreciate the Government's concerns about  
12 providing a witness list too early and all of that, but my  
13 understanding is the Government should be giving us a witness  
14 list in the coming days. So we're about a month out from  
15 trial and, so, to me this wasn't the tool.

16 It was just to make sure that list is complete so  
17 that we avoid any obvious conflicts. We will get to trial  
18 disclosures in a moment. I wanted to agree on the procedures  
19 for getting the jurors the questionnaire and I think we have  
20 agreed on that. We've agreed on the jurors, right?

21 MR. DeCASTRO: Yes, we are.

22 MS. KOMATIREDDY: Yes, Your Honor.

23 THE COURT: All right. Now let's talk about witness  
24 disclosure. I take Mr. de Castro's point. The Government may  
25 recall that in the last trial I believe I barred a government

W. Name - direct/cross - Atty

7

1 witness for not having been disclosed when we set the  
2 timetable to disclose them.

3 Now, I understand that the Government has some  
4 sensitivity about the disclosure of witnesses and, again, this  
5 is entirely different than the names on the attachment to the  
6 questionnaire. This is witness disclosure.

7 So, let me ask the government. I know you have some  
8 concerns about not disclosing certain witnesses until a later  
9 point than other witnesses, but when -- how far in advance of  
10 each witness's testimony are you going to make a disclosure of  
11 that witness? If you want to group them into two groups you  
12 can do that.

13 MS. KOMATIREDDY: Your Honor, our plan is to  
14 disclose the bulk of the remaining -- make the bulk of the  
15 remaining disclosures by December 9th, which should include  
16 disclosing -- we've already disclosed the identity of certain  
17 cooperating witnesses and we expect to disclose the identity  
18 of the remaining cooperating witnesses by that date. There  
19 are some additional witnesses who we are working on securing  
20 or for other witnesses we would prefer to disclose their  
21 identities closer to their date of testimony.

22 Our plan on those was to make a judgment based on  
23 the volume of their 3500 material and when it would be  
24 reasonable to -- how far in advance is a reasonable amount of  
25 time for the defense to process that material. In general,

W. Name - direct/cross - Atty

8

1 the second category of witness has less 3500 material than a  
2 cooperating witness who has a great deal of 3500 material.

3 THE COURT: All right, let me suggest this: The  
4 witnesses -- the witness list you're going to disclose by the  
5 9th, that's not all that useful for the defense because you're  
6 going to give every possible witness, but you're going to  
7 give, for example, 50 witnesses and end up calling only 30 at  
8 trial.

9 So what I am suggesting is there has to be some  
10 period of time in advance of calling the witness, if the  
11 witness is not a sensitive witness, and then a shorter period  
12 of time if the witness is a sensitive witness. And these  
13 disclosures are rolling because, in fact, every day of the  
14 trial you will have an obligation to disclose the witnesses  
15 for that day of trial or that three-day of trial or however  
16 much the increments are that I order today. And what I would  
17 like to suggest is for non-sensitive witnesses, we do  
18 three-day in advance disclosure and for sensitive witnesses,  
19 we do no less than 24 hours disclosure. That's a proposal so  
20 what I want to ask the Government, is that workable?

21 MS. KOMATIREDDY: Yes, Your Honor. I think that is.

22 THE COURT: Let me hear from the defense.

23 MR. DeCASTRO: Judge, I just want to clarify so I'm  
24 on the same page, are we talking about disclosure of the  
25 witness or of the material, the 3500 material?



W. Name - direct/cross - Atty

9

1 THE COURT: I haven't gotten to the 3500 material  
2 yet. I'm only covering how much notice you get that a witness  
3 is going to testify shortly in the trial. Three days for  
4 non-sensitive witnesses and one day for sensitive witnesses.

5 MR. DeCASTRO: So I'm assuming I have everything,  
6 you're just telling me you're calling them tomorrow or in  
7 three days, something like that.

8 THE COURT: Correct.

9 MR. DeCASTRO: I think we're fine with that. My  
10 experience with several lengthy trials is usually the  
11 Government on Friday night tells us who they're calling next  
12 week. So I guess that would -- that's usually -- that's what  
13 I'm used to and it usually works really well. I did that in a  
14 six-month trial and I did that in a three-month trial and that  
15 was usually pretty good. That might be slightly more than  
16 three days I suppose. That's something I'm comfortable with  
17 but I think we can work on three, if that's what the Court  
18 wants.

19 THE COURT: Let's go with the schedule I set forth,  
20 three days/one day, as the default position. I would urge the  
21 government to give more time or notice if possible and  
22 whatever the parties work out in that connection, I will be  
23 glad to so order but if you can't work anything out despite my  
24 urging the Government to try to get a little more time on at  
25 least some of the witnesses than that, then the default will

W. Name - direct/cross - Atty

10

1 be three and one.

2 Now, with regard to the 3500 material let's talk  
3 about the cooperating witnesses first. When is the earliest  
4 date that the government is comfortable disclosing 3500  
5 material in advance of a witness's testimony?

6 MS. KOMATIREDDY: Your Honor, as I mentioned, we've  
7 already disclosed several and we plan to disclose the  
8 remainder by December 9th. If there's any reason it comes up  
9 in the next few days that that's not going to be possible, we  
10 will let the Court know.

11 THE COURT: So, you believe that by the time the  
12 magistrate judge sits down with the jurors, probably the week  
13 before when the jurors are first getting the questionnaire,  
14 you will have disclosed all 3500 material?

15 MS. KOMATIREDDY: Certainly December 9th for all  
16 cooperating witnesses, Your Honor? Are you asking for all  
17 witnesses?

18 THE COURT: I was actually saying January 9th but  
19 you raised a good point. What is the date prior to  
20 January 9th when you're going to have at least the bulk of the  
21 3500 material delivered? So you'll have both of them by  
22 December 9th?

23 MS. KOMATIREDDY: Yes, Your Honor.

24 THE COURT: If there's additional 3500 material that  
25 you have not produced by December 9th, I'm going to direct you

W. Name - direct/cross - Atty

11

1 to produce it at the earliest date that you think you can  
2 produce it, taking into account special circumstances that  
3 would require it to be produced later than December 9th. I  
4 will direct the Government to keep in mind that obviously what  
5 the defense is trying to avoid and what they're legitimately  
6 trying to avoid is the situation where you give them the name  
7 of a cooperating witness the day before and they've got three  
8 boxes of 3500 material to go through to prepare for that  
9 witness. They want to be prepared in advance so you will have  
10 to give them that 3500 material much earlier.

11 What I'm trying to avoid is a situation where the  
12 defense has not had enough time to prepare for  
13 cross-examination and if that happens I'm going to take a day  
14 or two-day break from the trial to let them catch up. Okay,  
15 are we all on the same page.

16 MS. KOMATIREDDY: Yes, Your Honor. We understand.  
17 We're trying to avoid both of those situations as well.

18 THE COURT: Anything else we need to talk about  
19 today?

20 MR. DeCASTRO: Not from the defense, Judge.

21 THE COURT: Is the government okay.

22 MS. KOMATIREDDY: Can I ask logistical questions  
23 about the trial, Your Honor? I understand I think the last  
24 time we discussed this Your Honor you had mentioned that you  
25 don't ordinarily sit on Fridays in a long trial.

W. Name - direct/cross - Atty

12

1 THE COURT: Correct.

2 MS. KOMATIREDDY: Should there arise a question  
3 regarding witness availability, is that something that the  
4 Court would entertain doing, obviously after we applied for it  
5 and with sufficient notice?

6 THE COURT: Well, I will entertain anything, but the  
7 questionnaires are going to tell the jurors no Fridays. If  
8 there is some reason that a witness cannot be examined on  
9 Thursday or the following Monday, but only on the Friday,  
10 we'll have to play it by ear.

11 MS. KOMATIREDDY: I understand.

12 THE COURT: All right. Thank you all for calling  
13 in. We'll be seeing a lot of each other soon.

14

15 (Matter adjourned.)

16 - oo0oo -

17

18

19

20

21

22

23

24

25